

Notice of Allowability

Application No.

10/070,733

Examiner

Lynda M Salvatore

Applicant(s)

KASEMURA ET AL.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 12/01/03.
2. ☒ The allowed claim(s) is/are 1-12.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

Response to Arguments

1. Applicant's accompanying remarks filed 12/1/03 have fully considered and entered. Applicant's substitute abstract is sufficient to overcome the objection to the specification set forth in section 1 of the last Office Action. As such, this objection is withdrawn. Applicant's arguments regarding the rejection of claims 1-12 as set forth in section 3 of the last Office Action have been found persuasive. Thus, the rejection of claims 1-12 rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nakata et al., US 2002/0094444 A1 is hereby withdrawn. Accordingly, claims 1-12 are found patently distinguishable over the prior art of Nakata et al., US 2002/0094444 A1 for reasons set forth herein below.

Allowable Subject Matter

2. The following is an examiner's statement of reasons for allowance: 1-12. Comparative data found in tables 2 of the specification support Applicant's argument that using a random aliphatic co-polyester results in significantly inferior results when compared to the inventive aliphatic block co-polyester, which meets the limitations set forth in conditions 1-3 of independent claim 1. Additionally, the data contained in table 3 supports that the inventive block co-polyester provides unexpected results when compared with block co-polyesters having molecular weights or monomer concentrations outside the claimed range. The prior art of Nakata et al., US 2002/0094444 A1 does teach a composition comprising a mixture of (A) 5-85% wt % of a polylactic acid, (B) 5-50 wt % of an aliphatic polyester resin and (C) a 10-45 wt % of a polycaprolactone based resin (Section 0356). Nakata et al., US 2002/0094444 A1 further

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discloses that the polycaprolactone based resin may comprises a homopolymer of polycaprolactone or a copolymer of polycaprolactone with aliphatic hydroxycarboxylic acid, but does not specifically disclose an aliphatic block co-polyester satisfying the conditions of containing a lactic acid component in 20-80 wt. % monomer, an average molecular weight of less than 60,000 and wherein further the polylactic acid segment and aliphatic polyester segment of aliphatic block co-polyester each has an average molecular weight from 500 to 55,000. Thus, Applicant's arguments regarding the unexpected superior results of the inventive block aliphatic co-polyester when compared to the aliphatic co-polyester (i.e., random or to a co-polyester without the claimed molecular weights or monomer concentrations) of the prior art are found persuasive.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1482. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 16, 2004

Is


CHERYL A. JUSKA
PRIMARY EXAMINER